



**STATE OF DELAWARE
PUBLIC SERVICE COMMISSION**

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December 9, 2009

Bruce H. Burcat, Executive Director
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

Re: PSC Docket No. 08-194 (Verizon Reliability)

Dear Mr. Burcat:

Pursuant to Commission Order No. 7433 (Aug. 19, 2008), I have conducted hearings in the captioned docket and submit herewith the following:

1. My Hearing Examiner's Report and Recommendation;
2. The Proposed Settlement Agreement of the Parties; and
3. An Exhibit List consisting of five (5) exhibits, three (3) of which have subparts.

I have also included an updated service list for your convenience.

The parties have indicated to me that they wish to waive the 20-day exceptions period in this matter. Therefore, if possible, please place this matter on the Commission's agenda for its December 22, 2009 public meeting.

Thank you for your consideration.

Very truly yours,

Ruth Ann Price
Ruth Ann Price
Senior Hearing Examiner

Enclosures (3)

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE INVESTIGATION ON)
THE MOTION OF THE COMMISSION INTO THE)
ADEQUACY OF BASIC TELECOMMUNICATIONS) PSC DOCKET NO. 08-194
SERVICES PROVIDED BY VERIZON DELAWARE)
LLC (OPENED AUGUST 19, 2008))

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

RUTH ANN PRICE
SENIOR HEARING EXAMINER

DATED: DECEMBER 9, 2009

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Ruth Ann Price, duly appointed Hearing Examiner in this Docket pursuant to 26 Del. C. § 502 and 29 Del. C. ch. 101, by Commission Order No. 7433, dated August 19, 2008, reports to the Commission as follows:

I. APPEARANCES

On behalf of Respondent, Verizon Delaware LLC ("Verizon" or "Company"):

WILLIAM D. SMITH, ESQUIRE, ASSISTANT GENERAL COUNSEL
ANN N. SAGERSON, ESQUIRE, ASSISTANT GENERAL COUNSEL
LEIGH A. HYER, ESQUIRE, GENERAL COUNSEL
Shari E. Smith, Director, Public Policy

On behalf of the Public Service Commission Staff ("Staff"):

Murphy & Landon
BY: FRANCIS J. MURPHY, ESQUIRE
Andrea Maucher, Public Utilities Analyst
David Bonar, Commission Ombudsman
Robert Loube, Staff Consultant
Rowland Curry, Staff Consultant

On behalf of the Division of the Public Advocate ("DPA"):

KENT WALKER, ESQUIRE, DEPUTY ATTORNEY GENERAL
G. ARTHUR PADMORE, PUBLIC ADVOCATE
MICHAEL SHEEHY, DEPUTY PUBLIC ADVOCATE
Kishon C. Williams, Administrative Specialist

II. BACKGROUND

1. At a public meeting of the Delaware Public Service Commission ("Commission") held on July 8, 2008, the Commission Staff ("Staff") presented a memorandum to the Commission detailing the results of a periodic review of Verizon's service quality performance. The results indicated that while "service quality issues have improved on the whole, with few exceptions, . . . , the number of service complaints have trended upward since 2002 and, since 2006, Verizon has consistently failed to meet the Commission-established service objective for 'out-of-service trouble reports cleared in 24 hours' and, at times, has missed the established objective for 'repeated trouble reports'...." The Commissioners themselves had received complaints from Verizon customers concerning service quality and, at times, had experienced problems with Verizon's service quality firsthand. The Commission voted to open a formal docket to investigate Verizon's service quality performance.

2. On August 6, 2008, Verizon filed a response to Staff's memorandum, in which Verizon urged the Commission to reconsider its motion to open a formal docket and instead allow Verizon to continue working with Staff in a cooperative effort to address Staff's and the Commission's concerns regarding Verizon's compliance with service quality rules established by the Commission.

3. On August 19, 2008, the Commission, upon its own motion, entered PSC Order No. 7433 to open a docket to review the adequacy of basic telecommunications services provided by Verizon. The docket was established to investigate the efficiency, sufficiency and adequacy of Verizon's basic service provided to customers over its copper facilities, and to consider whether the Commission should, under 26 Delaware Code Section 208, impose a penalty upon a finding that such facilities or service were insufficient, inadequate or inefficient. In addition, this docket was established to investigate whether Verizon has met and will in the future comply with the objectives and reporting requirements set forth in the Commission's regulations for telephone companies.

4. In PSC Order No. 7433, the Commission assigned this matter to me to conduct appropriate hearings and to report my proposed findings and recommendations to the Commission.

5. On August 27, 2008, the Public Advocate exercised his statutory right of intervention in this proceeding pursuant to 29 Del. C. §8716.

6. Pursuant to my assignment, I approved a procedural schedule for public comment sessions, the submission of prefiled testimony, and evidentiary hearings, which schedule was subsequently amended at the request of the parties.

7. The public comment sessions were held in Wilmington on March 9, 2009; in Dover on March 10, 2009; and in Georgetown on March 11, 2009. A total of five customers and several

Communications Workers of America ("CWA") Union Officials attended the comment sessions. The nature of their complaints concerned extended periods of phone and internet outages lasting up to five days, crossed lines, static and noise on the line and poor customer service. At the public comment session held on March 11, 2009 in Georgetown, Jim Hummel, Executive President for CWA Local 13101 presented me with hard copies and a disk containing numerous photographs of Verizon facilities.

8. On August 21, 2009, I approved the parties joint proposed procedural schedule relating to the remainder of the events during discovery through the evidentiary hearings. Under the amended procedural schedule, evidentiary hearings were scheduled to be held on November 3-5, 2009.

9. On October 1, 2009, the parties informed me that they were making substantial progress towards a resolution of the issues in this docket and requested a two-week extension of the procedural schedule to complete their discussions. I instructed the parties to provide me with a list of the issues that had been resolved and the issues that required further discussion. I approved the parties request for a two-week extension upon finding sufficient substance in the issues list provided to me by Staff's counsel, Francis J. Murphy, Esquire and confirmed in a follow-up conference call with Mr. Murphy, counsel for Verizon William Smith, Esquire and Ann Sagerson, Esquire and counsel for the Division of the Public Advocate, Kent Walker, Esquire. Under

the amended procedural schedule, evidentiary hearings were scheduled to be held on November 16, 17 and 20, 2009.

10. On October 16, 2009, I received written notice from the parties informing me that they had reached a settlement in principle, but that the terms of the settlement had yet to be reduced to writing. This was reiterated to me by the parties during a conference call that occurred on October 19, 2009 between myself, counsel for Staff, Francis J. Murphy, Esquire and counsel for Verizon, William Smith, Esquire and Ann Sagerson, Esquire. At the outset of the call, Mr. Murphy represented that he had spoken with Deputy Public Advocate, Michael Sheehy, who had consented, in his absence, to having the call and to Mr. Murphy's representations. I directed the parties to provide me with a proposed settlement on or before November 12, 2009.

11. On November 9, 2009, Francis J. Murphy, Esquire, on behalf of the Staff, the Public Advocate and Verizon, submitted a Settlement Agreement (the "Settlement Agreement") intended to resolve the issues raised in the proceedings. On November 16, 2009, I conducted an evidentiary hearing at which the parties introduced documents into evidence and also presented testimony regarding the reasons the Settlement Agreement should be accepted.

12. I hereby submit these Findings and Recommendations regarding the Settlement Agreement for the Commission's consideration. For the Commission's convenience, the Settlement Agreement is attached hereto as Appendix "A."

III. THE SETTLEMENT AGREEMENT

13. As noted previously, on November 9, 2009, the parties submitted for my consideration a Settlement Agreement to resolve the issues in this docket concerning the adequacy of basic telecommunications services provided by Verizon. See Appendix A; Ex.4¹. The most crucial provisions of the Settlement Agreement are found at paragraphs 8 through 12. Rather than attempt to summarize them, I will quote them verbatim:

8. Performance Improvement Plan. Verizon-DE will work with Staff and the Public Advocate to develop a detailed performance improvement plan within 90 days of the Commission's approval of this Settlement Agreement. Specific areas to be addressed will include the following: a) Out-of-Service Trouble Clearing Time, b) percentage of Repeated Trouble Reports, and c) Business Office Answer Time.

The performance improvement plan will address employee training issues focusing on improving service to customers served by copper distribution facilities. Training emphasis will include techniques for ensuring weather-resistant copper cable enclosures.

9. Monitoring. Verizon will continue monitoring performance results in the same manner that it has during the Commission's investigation for the following five categories of service quality measurements: a) Primary Service Order Installations, b) Customer Trouble Reports, c) Out-of-Service Trouble Clearing Time, d) Repeated Trouble Reports, and e) Installation Commitments Met. Verizon will provide this information to Staff and the Public Advocate on a confidential basis upon request. Verizon will also work with Staff and the Public Advocate to develop a method for Verizon to address any service quality concerns identified by the performance results monitoring.

¹ Exhibits will be cited as "Ex. ____." References to the transcript will be cited as "Tr. ____."

10. **Reports.** (a) Verizon will perform a review of, and provide Staff and the Public Advocate with a report describing, its processes and procedures used to track customer complaints and trouble reports. Such review is intended to provide assurance to the Commission that Verizon's procedures and systems properly handle trouble reports from the time a trouble report is received until it is closed out. The report will include a review of (i) the appointment, testing, and dispatch processes; (ii) an examination of opportunities for enhancing the ability of Verizon's databases to share information; (iii) any prompting mechanisms for service technicians; and (iv) an evaluation of the vScrub process and the effectiveness of its automated line testing system. After the report is submitted to Staff and the Public Advocate, Verizon and its subject matter experts will meet with the Staff and the Public Advocate to address any questions resulting from the Report. (b) Verizon will perform an analysis of the Company's business office answer time processes and performance reporting issues. The analysis will include all issues related to business office answer time performance including, if applicable, the timing delays caused by voice response menu systems that may impact waiting times and/or performance results.

11. **Quarterly Reporting and Review.** (a) Verizon will submit a quarterly report of "bypass" conditions. For purposes of this Settlement Agreement, "bypass" is defined as a temporary facility to bypass defective sections of cable. (b) Verizon will provide the Staff and the Public Advocate with data quarterly showing its performance in Delaware for appointments met with respect to repair service. (c) Verizon will meet with Staff and the Public Advocate on a quarterly basis to discuss its efforts regarding Verizon's infrastructure improvement projects.

12. **Duration.** The requirements in paragraphs 8 through 11 above will remain in effect, through December 31, 2011, and will be effective under normal operating conditions. Normal operating conditions means service conditions within Verizon's control. In the event service conditions arise that are not within Verizon's

control, (a) the Commission may waive any requirements, or (b) Staff and the Public Advocate may, with the Commission's approval, stipulate to a suspension of any requirements. Conditions not within Verizon's control include, but are not limited to, emergency conditions such as extreme weather, acts of God, natural disasters, civil disturbances, acts of vandalism, and work stoppages.

14. Other more general terms of the Settlement Agreement are as follows:

(a) The provisions of the Settlement Agreement are not severable; therefore, if the Commission fails to approve it, or modifies any of the terms and conditions of the Settlement Agreement, the Settlement Agreement will terminate and be of no force and effect. Appendix A; Ex. 4, paragraphs 13, 18.

(b) Commission approval of the Settlement Agreement will preclude any of the Settling Parties from taking a contrary position with respect to issues specifically addressed and resolved in the Settlement Agreement in proceedings involving the review of the Settlement Agreement and in any appeals related to the Settlement Agreement. In the event that the Settlement Agreement does not become final, each of the Settling Parties reserves its respective rights to submit testimony, file briefs, or otherwise take positions as it deems appropriate in its sole discretion to litigate the issues in this proceeding. Appendix A; Ex. 4, paragraphs 14, 15. If the Settlement Agreement is approved by the Commission, it shall not be regarded as precedent in any future proceeding involving any of the Settling Parties, or any other person or regulated entity of any kind. Appendix A;

Ex. 4, paragraph 14. The Settling Parties irrevocably waive any right to appeal any Commission order approving the Settlement Agreement without modification. However, the Settlement Agreement is made without admission against or prejudice to any interest to any factual or legal positions that any of the Settling Parties may assert in the event that the Commission does not enter a final order approving the Settlement Agreement without modifications, or in other proceedings before the Commission or other governmental body so long as such positions do not attempt to abrogate the Settlement Agreement. Appendix A; Ex. 4, paragraph 17.

(c) The Settlement Agreement shall be governed by, construed and interpreted in accordance with the substantive laws of the State of Delaware without giving effect to its conflict of laws principles. Appendix A, Ex. 4; paragraph 21. Each of the Settling Parties have cooperated in the drafting and preparation of the Settlement Agreement, and therefore the interpretation of the Settlement Agreement shall not be construed "for" or "against" any Settling Party based on the party's status as a drafter of any part of the Settlement Agreement or of the Settlement Agreement as a whole. Appendix A, Ex. 4; Ex. 4, paragraph 19.

15. On November 16, 2009, I conducted a public evidentiary hearing in Dover for the purpose of taking testimony from the Settling Parties regarding the Settlement Agreement. The record

in this case consists of a transcript of 295 pages and five (5) exhibits.

IV. THE EVIDENTIARY HEARING

16. **Exhibits Introduced into Evidence.** At the outset of the November 16, 2009 evidentiary hearing, the following exhibits were admitted into evidence by agreement of the parties and without objection:

Ex. 1, the public notices of the evidentiary hearing published in the Delaware State News on October 16, 2009, The News Journal on October 18, 2009, and The Sussex Post on October 22, 2009;

Ex. 2, the Report of the Staff's Consultants, and Ex. 2A, the confidential version of the Report;

Ex. 3, the confidential version of the Staff's Memorandum to the Hearing Examiner, and Ex. 3A, the public version of the Staff's Memorandum;

Ex. 4, the parties' Settlement Agreement (attached hereto as Appendix A);

Ex. 5, the public version of Verizon Delaware's comments on the Report of the Staff's Consultants, and Ex. 5A, the confidential version.

17. **Staff's Consultants and Exs. 2 and 2A, Report of the Staff's Consultants.** With the approval of the Commission, Staff retained two expert consultants to assist in the investigation of Verizon's quality of service. The first is

Rowland Curry, who has over 35 years of experience in the regulated utility industry, predominantly focusing on state and federal telecommunications policy and technology issues. Mr. Curry has a degree in Electrical Engineering from Texas Tech University, is a Registered Professional Engineer in Texas, and is a member of several professional organizations, including the National Society of Professional Engineers. Before beginning his consulting career in 2001, Mr. Curry served on the Staff of the Public Utility Commission of Texas for almost 25 years. While at the Texas PUC, Mr. Curry served as the Director of the Telephone Division, and as the Chief Engineer. Mr. Curry has been closely involved in telephone service quality issues since 1976, and established an effective program of service quality analysis at the Texas PUC that combined operational report analysis with on-site field testing of all local exchange carriers. He wrote service quality rules for the Texas PUC, and was instrumental in preparing a Handbook of Telephone Service Quality Rules for the National Association of Regulatory Utility Commissioners (NARUC). Mr. Curry served terms as the Chair of NARUC's Staff Subcommittee on Telecommunications and its Staff Subcommittee on Telephone Service Quality. He was a consultant for the Pennsylvania Office of Consumer Advocate and the New Hampshire Public Utilities Commission on telephone service quality service rules and issues involving Verizon companies.

18. Staff's second consultant is Robert Loube, Ph.D. Before becoming a consultant, Dr. Loube was an industry economist

at the Federal Communications Commission, the Director of the Office of Economics of the Public Service Commission of the District of Columbia (DCPSC), and the econometrician of the Indiana Utility Regulatory Commission. Dr. Loube served on the Federal-State Joint Boards for Universal Service and Separations. While at the DCPSC, he testified on issues related to class revenue responsibility, rate structure, low income rates, demand side management programs, and least cost planning principles, and chaired the Commission's workshop that reviewed the DCPSC's telephone service quality rules. Dr. Loube has testified on behalf of consumer advocates and state attorneys general in cases that focus upon rate design, broadband deployment, revenue forecasts, market power and regulatory structure, and the impact of Fiber-to-the-Premise networks on service quality.

19. Mr. Curry and Dr. Loube submitted a comprehensive, 70-plus page Report detailing their review and analysis of Verizon's quality of service in Delaware. Rather than attempt to summarize their Report, which is in evidence, I will quote extensively from their "Key Findings" found at pages 3-4 of the Report:

1. KEY FINDINGS

- Verizon DE has significantly improved its performance on the Out-of-Service ("OOS") troubles cleared in 24 Hours metric over the last 18 months. Even with that improvement, however, the Company has failed to meet the requirement on a statewide average basis in seven of the past twelve months (5.10.3).

- Verizon-DE consistently fails to meet the Commission's service quality standard in the category of Business Office Answer Time (5.7.1.2).
- The Company's performance in one additional area - Repeated Trouble Reports (5.10.4) - has generally met Commission objectives, but is trending in the wrong direction, missing the objective in four of the past twelve months.
- In addition to examining the Company's performance data on a statewide basis, the examination of individual exchange data shows local inadequacies that are not reflected in statewide data. Even when the Company may be meeting the service quality objective on a statewide basis, there are exchanges and portions of exchanges that are receiving a reduced grade of service quality.
- Further disaggregation of the Company data helped to identify geographic locations within the state where there are unusually high trouble and repeat trouble reports. The disaggregation study also revealed that Verizon is unable to provide detailed address information (that is, a complete street address, with city, state and zip code) of its customers reporting troubles and repeat troubles. Verizon's inability to provide this data prevented the consultants from providing the in-depth analysis that had been envisioned.
- Despite increasing construction expenditures in 2005 and 2006, Verizon-DE continues to experience challenges in restoring outages on its copper facilities in Delaware.

- Staff has been provided with examples of extremely poor outside plant maintenance conditions, including exposed splice cases and pedestals, "rats-nest" cross-connect boxes, and drop wires strung across the ground and through trees. Some of these inadequate facility conditions were "bypasses" which should be temporary and should be corrected with new facilities.

- A limited examination of Verizon's customer commitment and repair practices have revealed potential concerns regarding the Company's internal processes that may affect the accuracy of the performance reported to the Commission. Such concerns warrant further examination of the Company's internal processes to assure proper reporting of the Company's performance.

In addition to the "Key Findings", the Consultants noted that the number of Verizon employees in Delaware has steadily declined since mid-2007.

20. Because the parties have entered into a Settlement Agreement, I do not consider it necessary to delve further into the particulars of the Consultants' Report. As I will discuss in the succeeding paragraphs, Verizon disagrees with the methodology and certain of the findings in the Consultants' Report. However, the many disputes about the content of the Consultants' Report are not germane to my consideration of the Settlement Agreement. As reflected herein, the parties have agreed to address, through the Settlement Agreement, certain important service quality issues, among them: a) Out-of-Service Troubles cleared within 24 hours, b) Repeated Trouble Reports, c) Business Office Answer Time, d) bypasses put in place by Verizon to temporarily fix defective sections of cable, and e) customer service practices.

21. Verizon Delaware's Comments on the Report of Staff's Consultants, Exs. 5 and 5A. Verizon submitted extensive written

comments about the Report of Staff's Consultants, consisting of about 35 written pages. Verizon takes serious issue with the Key Findings in the Consultants' Report. See, e.g., Ex. 5 at pages 4-7. In its comments, Verizon maintains that it is providing efficient, sufficient and adequate service to its customers in Delaware and that nothing in the Consultants' Report indicates otherwise. Verizon says that it routinely satisfies fourteen of the sixteen PSC Regulation Docket 20² Service Quality Index metrics that it reports to the Commission each month. Verizon points to its performance on the Network Trouble Report Rate (NTTR) as the best indicator of the health of Verizon's copper network, and that it has both a) routinely satisfied the Commission's standard for NTTR, and b) improved its performance year-over-year. See Ex. 5 for the full text of Verizon's arguments in opposition to Staff's Consultants' Report.

22. Verizon notes that it has "significantly" and indeed "dramatically" improved its performance on Out-of-Service cleared in 24 hours (OOS). Verizon contends that its most recent OOS performance patterns resemble the level of service that it provided in the earlier part of this decade, and maintains that missing the metric sporadically in the last year is not indicative of a failure to provide reasonably adequate service.

² PSC Regulation Docket No. 20 is captioned as *Regulations Governing the Minimum Service Requirement for the Provision of Telephone Service for Public Use with the State of Delaware*, PSC Order No. 3232 (Jan. 15, 1991) (also known as the "Telephone Service Rules").

Ex. 5 at 5. To the contrary, Verizon says that "service in Delaware is excellent." *Id.* Ex.

23. Verizon does concede that it failed to meet the state-wide average for OOS in seven of the last twelve months. Ex. 5 at 4-5. Verizon also says that, while it has routinely satisfied the Repeated Trouble Report Rate metric over the past few years, it acknowledges that the metric scores are trending in the wrong direction. Ex. 5, page 7. Verizon concedes that it should take steps to address the tracking of bypasses, and that the issue is addressed in the Settlement Agreement. In addition, Verizon points out that it provided information about its bypasses to Staff and the Public Advocate in June 2009, and has already implemented permanent fixes to a number of bypasses and has approved work orders to fix several more. Finally, Verizon agrees that it has frequently missed the Business Office Answer Time metric, and that the issue will be addressed in the Performance Improvement Plan referenced in the Settlement Agreement. Ex. 5, page 7.

24. Verizon notes that the Consultants' commented upon its construction expenditures and the number of employees in its workforce. Verizon says that there is no relationship between Telephone Plant in Service (TPIS) per access line and service quality. Verizon notes that expenditures for "Service Improvement" are capital investments that yield benefits over the life of the investment. In addition, while expenditures for service improvements have decreased since 2003, expenditures for

asset restoration have increased substantially -- more than doubling since 2004. On the subject of its workforce, Verizon maintains that the ratio of employees per access line is a significantly more important indicator of Verizon's commitment to service quality than the absolute number of employees, which reveals very little by itself. Verizon says that overall any reduction in its workforce has been consistent with the decline in Verizon's access lines in Delaware. If one looks at the most relevant workforce measure, which for Verizon is the number of employees per access line, Verizon says that its workforce levels have improved, and that overall Verizon has actually increased its number of employees per access line since 2001.

25. While Verizon disagrees with many of the findings in the Consultants' Report, it has agreed to a settlement with Staff and the Public Advocate that will address the major issues of concern identified in the Report. Verizon says, however, that it views the settlement "as only an interim step towards the need for the Commission to re-evaluate and revise the Docket 20 rules." Ex. 5, page 4.

26. Staff's Memorandum to the Hearing Examiner, Ex. 3 and 3A. Staff submitted a November 6, 2009 Memorandum into evidence which discussed the Report of the Staff Consultants, Verizon's Comments, and the parties' Settlement Agreement. Staff identified the following key questions from Commission Order No. 7433 which are to be addressed in this docket:

1) That the Commission, finding such action to be in the public interest, hereby establishes this docket for an investigation into the efficiency, sufficiency, and adequacy of basic services provided by Verizon Delaware LLC over its copper facilities and to consider whether or not the Commission should, pursuant to 26 Del. C. § 308, upon a finding that such facilities or services are inefficient, insufficient, or inadequate, impose upon Verizon such penalty deemed necessary to restore such facilities and services to a state of efficiency, sufficiency, and adequacy.

2) That the Commission, as a part of the proceedings in this Docket, will also investigate the extent to which Verizon Delaware LLC has met, and will in the future comply with, the objectives and reporting requirements set forth in the Commission's Regulations Governing the Minimum Service Requirements for the Provision of Telephone Service for Public Use within the State of Delaware, including (but not limited to) a review of customer service practices utilized by call center customer service representatives and, in particular, how Verizon "closes out" customer complaints.

27. On the first issue, Staff relied primarily upon the Consultants' Report, Verizon's responses to formal and informal data requests, and customer complaints to conclude that there are geographic areas within the state receiving a degraded quality of service, as reflected, for example, by the existence of bypasses (temporary facilities used to bypass defective sections of copper cable). However, Staff observed that Verizon has been making meaningful improvements to its copper facilities, and the Settlement Agreement reflects Verizon's written commitment to continue working with Staff and the Public Advocate on addressing problems with its copper network. The Staff's observation, which is based upon the results of an investigation lasting more than a year, reinforces comments made by Staff during the Commission

meeting on July 8, 2008, where the Staff concluded that "[Verizon's] service quality issues have improved on the whole, with few exceptions," and that "Verizon and Staff [have] been working together ... fairly well, over the last year to improve their quality [of] service." Staff reported that, of the sixteen service metrics being tracked by Verizon, the Company has consistently met thirteen for significant periods of time. As to the three metrics where Staff and the Public Advocate contend improvement is needed, namely, Out of Service Troubles Cleared in 24 Hours, Business Office Answer Time, and Repeated Trouble Reports, some progress has either been made, or is anticipated. Staff also reported that Verizon has recently implemented procedures to more systematically identify, track, and correct bypasses in its copper network. Because Verizon has been working cooperatively with Staff and the Public Advocate to improve its service quality and to address problems with its copper network, Staff concluded that it was not in the public interest to recommend that the Commission consider imposing financial penalties upon Verizon. In Staff's view, it will benefit customers more if Verizon's financial resources are directed to improving and maintaining the Company's copper network.

28. Staff notes that the Settlement Agreement imposes four major requirements upon Verizon. First, within 90 days of the Commission's approval of the Agreement, Verizon must work with Staff and the Public Advocate to develop a "detailed

Performance Improvement Plan." According to Staff, the Plan will "address specific areas which are in need of improvement, and will also focus upon employee training." Second, Verizon must continue to review and monitor its service quality performance and is obligated to address any service quality issues identified by the monitoring process. Third, Verizon must undertake reviews of service quality issues of concern to Staff and the Public Advocate, which are identified in the Report of the Staff's Consultants. These service quality issues are enunciated in paragraph 10 of the Settlement Agreement. Under paragraph 10(a), Verizon is required to review the processes and procedures it uses to track customer complaints and trouble reports in order to provide assurance to the Commission that Verizon's procedures properly handle trouble reports from the time a trouble report is received until it is closed out, and provide a comprehensive report to the Staff and the Public Advocate. Verizon's customer service practices and, in particular, how Verizon "closes out" customer complaints were identified as subjects of concern to the Commission in PSC Order No. 7433 (paragraph 2). The parties are to use Verizon's report as a basis to address questions and issues about customer service practices. Under paragraph 10(b), Verizon must perform an analysis of "all issues related to business office answer time performance." According to Staff's Consultants, Business Office Answer Time is one metric in which Verizon "consistently fails to meet the Commission's service quality standard...." Consultants' Report (Ex. 2, page

3). Fourth, Verizon must report quarterly on its progress in dealing with service quality issues, for example, correcting bypasses, and must meet quarterly with the Staff and the Public Advocate to review Verizon's infrastructure improvement projects. These requirements will remain in place until December 31, 2011.

29. Concerning the second query posed in PSC Order No. 7433 (quoted in paragraph 25 above), it is apparent from the Staff's Memorandum and the Report of the Staff's Consultants that Verizon has been meeting all but three service quality metrics on a consistent basis for significant periods of time. As to the remaining three, the Settlement Agreement puts in place a process to address the shortcomings in Verizon's performance.

30. Staff's Memorandum does express two concerns about Verizon's ability to improve its service quality performance in the future. First, Staff notes that Verizon's total expenditures for "Service Improvement" and "Asset Restoration" were reduced substantially in 2007 and 2008. See Ex. 3A, page 12, and Ex. 2A at 58. Second, Staff noted that the number of Verizon employees in Delaware has steadily declined since mid-2007, and it recently learned that Verizon was in the process of making a considerable reduction in the number of technicians who perform work in the field. Verizon, however, has assured Staff and the Public Advocate that it is committed to providing quality service to its customers.

31. Staff disagreed with Verizon's contention that the Settlement Agreement should be viewed "as only an interim step towards the need for the Commission to re-evaluate and revise the Docket 20 rules." See discussion by Staff at Ex. 3A, pages 5-6. In light of the Settlement Agreement, I do not find it necessary to comment on these competing points of view.

32. Testimony of the Commission Staff. At the evidentiary hearing on November 16, 2009, Andrea Maucher testified for the Commission Staff. Tr. 269-273. Ms. Maucher has been employed by the Commission since June 2001, and her current position is Public Utility Analyst III. Tr. 270. She advises the Commission on federal, state, and local public utility issues in the fields of energy, telecommunications, and water. Ms. Maucher was the Staff Case Manager for this proceeding.

33. Ms. Maucher was familiar with the terms of the parties' Settlement Agreement. She testified that the parties had engaged in a substantial amount of formal and informal discovery, including data requests that Verizon was required to answer. She said that the parties had met in person and by teleconference on many occasions to discuss the issues, exchange information, and discuss the terms of the Settlement Agreement. Tr. 271. She testified that the investigation conducted in this docket yielded benefits for Verizon in identifying shortcomings in its network management. For example,

Verizon implemented a procedure to more systematically track and fix cable bypasses.

34. Ms. Maucher testified that the parties' Settlement Agreement was just and reasonable and in the public interest and in the best interests of Verizon's customers. Tr. 272. The Settlement requires the parties to work together to develop and implement a Performance Improvement Plan to enable Verizon to meet its service quality objectives going forward. There will be additional Commission oversight and additional reporting by Verizon to the Commission. *Id.* The Settlement Agreement is a binding commitment by Verizon to continue to improve service to Delaware customers who are using its copper network. Ms. Maucher testified that, while Staff does have some concerns about Verizon's employment numbers and expenditures on its copper network, Verizon has signified its commitment to improve the performance of its copper network. She also testified that the Settlement Agreement would save the parties, including Verizon and its customers, the substantial costs associated with extensive evidentiary hearings and further proceedings. Tr. 273.

35. **Testimony of the Division of the Public Advocate.** Michael D. Sheehy, the Deputy Public Advocate, testified on behalf of the Division in support of the Settlement Agreement. Tr. 273-281. Mr. Sheehy serves as the Case Manager for the Division of the Public Advocate in certain dockets, including this proceeding, and provides policy and technical advice. Mr. Sheehy has considerable experience regarding

telecommunications in general and landline communications in Delaware. He was a Verizon employee for 20 years, and held a number of positions which gave him responsibility for operational performance and budgets. Tr. 274. He was also the customer service center manager and had responsibility for repair and installation management. *Id.*

36. Mr. Sheehy testified that he is familiar with the terms of the Settlement Agreement. He said that in making a determination as to whether a settlement was in the public interest, he continued to rely upon the analysis recommended by Gary Myers, Esquire, the former Deputy Attorney General (DPA) assigned to the Commission. Tr. 276. Mr. Sheehy testified that DPA Myers advice was to consider three measures in evaluating a settlement. The first is whether sufficient information has been exchanged so that the parties can make reasonable decisions. *Id.* Mr. Sheehy indicated that this was an enormously complicated and detailed case. Yet Staff had been able to delve deeply into the issues and provided understandable public summaries of the issues in the form of the Consultants' Report and Staff's Memorandum. He said that Verizon has responded to a large number of interrogatories and that the parties had met frequently and was able to effectively come to terms with the technical data. Therefore, he expressed the view that more than sufficient information had been exchanged by the parties in this proceeding.

37. Mr. Sheehy said that the second consideration was whether the Commission would likely find a substantially different result if it were to hear the matter. Tr. 277. Given the depth of understanding that was achieved by the parties about the issues, he did not foresee the Commission entering a judgment that was substantially different from the Settlement Agreement. The third consideration was whether the settlement made common sense, and he was of the view that it did. Id. The investigation established that there is work to be done. Staff provided some excellent guidance as to where Staff thought the work should be focused. Verizon has committed the resources and agreed to reviews of some of its processes that were of concern to Staff and its Consultants. Mr. Sheehy believes that it is important for Verizon to have guidance at this point. Certain service trends have been improving and the Public Advocate has seen a virtual elimination of complaints associated with Verizon service. Tr. 278. Most of the current complaints are related to billing and similar matters. While the trend for Repeated Trouble Reports is a concern and problems remain in certain service measures, other trends have been moving in the right direction.

38. According to Mr. Sheehy, it makes sense to permit Verizon to run its business with the guidance that the Commission and Staff can provide. Tr. 280-281. The settlement requires Verizon to provide detailed information that will allow Staff and the Public Advocate to evaluate the direction in which service

measures are moving and to offer additional guidance. He envisioned that the parties would work together in much the same manner as they did when he worked for Verizon, where the parties would get together on a regular basis and identify what needed to be done in certain areas. Mr. Sheehy indicated that, under the Settlement Agreement, the tracking of service measures was in place and Verizon made commitments as to what it was prepared to do. Mr. Sheehy testified that if Verizon followed the Performance Improvement Plan and devoted appropriate resources to the effort, it should produce the kind of improvements in service quality that the Staff and the Public Advocate are hoping to achieve. He was of the view that it takes a long time for a network to deteriorate and a long time for it to be brought back. The Settlement Agreement provides the opportunity to address any existing service quality issues. *Id.* For all of these reasons, he concluded that the settlement was in the public interest, and in the interest of Verizon's customers, and should be approved by the Commission.

39. **Testimony of Verizon Delaware LLC.** William R. Allan, the President of Verizon Delaware LLC testified for the Company. Mr. Allan stated that he was familiar with the terms of the Settlement Agreement. He said that Verizon decided to enter into the Settlement Agreement because it had been expending substantial resources during this investigation. Tr. 282. Verizon is paying the bills of the Staff's consultants and legal counsel. The investigation required Verizon to conduct numerous

expensive special studies and required Verizon to dedicate personnel to answer a number of data requests. *Id.* It is important that Verizon's personnel be able to focus on running the business and the settlement allows them to do exactly that. *Id.*

40. Mr. Allan testified that he believes that the settlement is in the public interest and should be approved. The settlement focuses on steps that will lead to the provision of quality telephone service for Delaware customers, which is what he understands the Commission's objective to be in this case. First, the development of the Performance Improvement Plan will result in actions that will improve customer service. Tr. 282-283. Second, through monitoring, Staff and the Public Advocate will get feedback on the improvements that the Plan is delivering. Tr. 283. Third, by implementing the Agreement, the Staff and the Public Advocate will receive reports on issues of concern. *Id.* Fourth, by meeting with Staff and the Public Advocate on a quarterly basis, the parties will have the opportunity to understand and discuss the progress being made toward improving customer service. *Id.* According to Mr. Allan, the Settlement Agreement focuses Verizon's resources on what is important for Verizon and its customers in the highly competitive telecommunications market that exists in Delaware.

41. Responses to Questions Posed by Senior Hearing Examiner Price. I posed a series of questions to the parties and elicited additional information about the Settlement

Agreement. William Allan testified for Verizon that, while the parties had not discussed the details of how the Performance Improvement Plan would be developed, Verizon envisioned a process whereby the parties continued to meet in person and by teleconference and exchange documents pertinent to the development of the Plan. The focus of the Plan will be improving the service quality delivered by Verizon in Delaware. Mr. Allan agreed with Mr. Sheehy that the complaints about Verizon's service have declined since the late winter and early spring of 2007, when Verizon was having performance problems which prompted this investigation. Mr. Allan said that Verizon needed to make improvements and it had begun to do so through a combination of management focus, employee training, and dedication of resources. Tr. 284-285. Further, Mr. Allan agreed that the expenditure of resources in this proceeding has been in the public interest. Tr. 287.

42. Staff's counsel referred to the Consultants' Report and information provided by Verizon which had helped the parties to identify geographic areas within Verizon's copper network that are most in need of attention. Tr. 285. Staff envisioned that the Performance Improvement Plan would be developed in a series of meetings involving Verizon, the Public Advocate, and Staff with the parties providing input as to where financial resources are going to be expended, and that Verizon would continue to identify and correct problems with its copper network, particularly with respect to bypasses. Tr. 286. Staff believes

that addressing problems created by bypasses should help improve Verizon's service quality performance over time. Under the Settlement Agreement, there is a 90 day period after the entry of a Commission Order approving the Settlement Agreement during which the parties will develop the Performance Improvement Plan. Thereafter the Plan will be implemented and Verizon's service quality will be monitored through December 31, 2011, a period of about two years. Staff envisions working with Verizon and the Public Advocate, not only throughout the 90 day planning period, but also during the implementation period as well to continue to monitor where financial resources need to be dedicated, set priorities, and refine the Plan over time so as to maintain and improve the copper network. Staff is looking to see that Verizon is committing the financial resources to fix copper cable in the exchanges where the most significant service quality problems exist. Staff believes that between the monthly reporting requirements and the quarterly meetings called for in the Settlement Agreement, Staff and the Public Advocate will be able to monitor the progress of Verizon's construction and capital improvement projects and determine their effects on service quality.

43. Mr. Sheehy testified that he foresees the development of the Performance Improvement Plan as an interactive process. The Public Advocate does not intend to step into the place of Verizon's management, but rather to provide guidance on what the Plan should look like and the results that should be achieved.

Mr. Sheehy said that, like Staff, he believes that Verizon's progress in addressing problematic bypasses will be a very good indicator of progress. He considers the Performance Improvement Plan as a means to identify and correct the problem areas with Verizon's copper network. While the Plan will be developed over a three-month period, there will be opportunities after that to refine the Plan based upon feedback about whether the corrective actions being taken are proving effective.

44. In response to questioning by the Senior Hearing Examiner, the parties agreed that the Commission would be provided with a quarterly summary of the progress that is being made on service quality issues under the Settlement Agreement. Tr. 291. The parties also agreed that this docket could be closed, while reserving the rights of any party to make an application to the Commission to reopen the docket at a later time. Tr. 292-293.

V. DISCUSSION AND FINDINGS

45. Section 512 of the Public Utilities Act directs the Commission to "encourage the resolution of matters brought before it through the use of stipulations and settlement," and provides that the Commission may, upon hearing, approve the resolution of matters through stipulations and settlements when the Commission finds such resolutions to be in the public interest. 26 Del. C. §512(a), (c).

46. After reviewing the Settlement Agreement and considering the exhibits that were introduced into evidence and

the testimony of the witnesses who appeared on behalf of the Staff, the Public Advocate and Verizon about its benefits, I conclude that the Settlement Agreement is in the public interest and I recommend to the Commission that it should be approved in its entirety. First, the witnesses for all of the parties to the proceeding unanimously testified that they believe that the Settlement Agreement is in the public interest, a fact to which the Commission has traditionally given great weight.

47. Second, Staff and the Public Advocate expended considerable time and resources investigating and evaluating the quality of service that Verizon is providing to customers in Delaware, and identifying areas where Verizon's performance is in need of improvement. Staff retained two highly qualified consultants, Rowland Curry and Dr. Robert Loube, to investigate and analyze Verizon's service quality performance in Delaware. The Consultants conducted an extensive study of Verizon's service quality performance, which included, among other things, a) the review of Verizon's responses to formal and informal data requests, b) the review of Verizon's performance reports, c) the review and analysis of raw data, and d) the consideration of other relevant information. The Consultants then issued a comprehensive report which identified areas where Verizon's service quality performance needs improvement. The primary areas of concern are a) Out-of-Service Troubles cleared within 24 hours, b) Business Office Answer Time, c) Repeated Trouble Reports, d) the identification, tracking, and correction of

temporary bypasses of defective cable, and e) customer service practices and, in particular, how Verizon "closes out" customer complaints. At the same time, the Consultants, Staff, and the Public Advocate acknowledged that Verizon's performance already meets thirteen of the Commission's sixteen service quality metrics on a consistent basis, that Verizon has made progress on Out-of-Service Clearing Time, and was generally in compliance with the Repeated Trouble Reports metric (although it was trending negatively).

48. The Settlement Agreement is designed to address the specific areas in which Verizon's service performance is lacking. Under paragraph 8, Verizon is required to work with Staff and the Public Advocate to develop a "detailed" Performance Improvement Plan within 90 days, provided that the Commission approves the Settlement Agreement. The specific service quality areas to be addressed in the Plan include a) Out-of-Service Clearing Time, b) Repeated Trouble Reports, and c) Business Office Answer Time. Paragraphs 9 and 10 of the Settlement Agreement impose monitoring and reporting requirements related to a) Out-of-Service Clearing Time, b) Repeated Trouble Reports, c) Business Office Answer Time, and d) customer complaint and service issues, including the handling of trouble reports from the time a report are issued until it is closed out. Paragraph 11 is devoted, in part, to cable bypasses. The identification, tracking and correction of the bypasses will also be the subject of the Performance Improvement Plan. Finally, under paragraph 12, the provision of

paragraphs 8 through 11 will remain in effect until December 31, 2011. The reporting and meeting requirements in the Settlement Agreement are designed to assure that the Performance Improvement Plan is developed and implemented properly, and that modifications may be made to the Plan, over time, as circumstances warrant. The duration of the Settlement Agreement allows sufficient time for Verizon to work cooperatively with Staff and the Public Advocate to address and improve the service quality problems identified in the Consultants' Report. Because the Settlement Agreement specifically addresses the areas where Verizon's service quality is in need of improvement, the Settlement Agreement is designed to advance and protect the public interest and the interests of Verizon's customers.

49. My conclusion that the Settlement Agreement serves the public interest and the interests of Verizon's customers is also supported by the parties' acknowledgment that a) Verizon's quality of service has improved overall since late 2006 and early 2007, and b) there nevertheless remain shortcomings in Verizon's service performance that are in need of improvement. This is perhaps best exemplified by Verizon's performance on the Out-of-Service Clearing Time metric. According to Staff's Consultants, Out-of-Service Clearing Time is "at the core of service quality for telecommunications companies." Ex. 2, page 26. Staff's Consultants noted that

Verizon DE has significantly improved its performance on the Out-of-Service ("OOS")

troubles cleared in 24 Hours metric over the last 18 months. Even with that improvement, however, the Company has failed to meet the requirement on a statewide average basis in seven of the past twelve months. Ex. 2, page 27.

Therefore, the record demonstrates that a) Verizon has made strides to improve its performance on this important service metric, and b) more work remains to be done. The Settlement Agreement sets in place a detailed process to address the work that remains to be done.

50. As noted by Staff witness Andrea Maucher, the Settlement Agreement will save the parties, including Verizon and its customers, the substantial costs associated with more protracted proceedings, which were anticipated to include at least three days of evidentiary hearings and the submission of extensive post-hearing briefs. Given the number of disputed issues in the docket, the taking of exceptions to the Commission and possible court appeals were foreseeable. The very substantial costs associated with such proceedings are avoided by the Settlement Agreement. I note also that, if the parties were to litigate their disputes, the protracted proceedings that would follow would be expected to consume a great deal of time. If the Commission adopts my recommendation and approves the Settlement Agreement in its entirety, the parties can develop the Performance Improvement Plan in the first quarter of 2010, and should be in a position to implement significant aspects of the Plan in the second, third, and fourth quarters of 2010. It will

serve the interests of the public and Verizon's customers to begin this process as soon as circumstances permit.

VI. RECOMMENDATION

51. In summary, and for the reasons set forth above, I find that the Settlement Agreement is just and reasonable, in the public interest, and in the interests of Verizon's customers, and I recommend that the Commission approve it in its entirety. Furthermore, in accordance with the agreement of the parties reflected in paragraph 44 above, if the Commission approves the Settlement Agreement, the parties are to provide the Commission with a joint quarterly report summarizing the progress that is being made on service quality issues under the Settlement Agreement.

Respectfully submitted,



Ruth Ann Price
Senior Hearing Examiner

Dated: December 9, 2009

APPENDIX A

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE INVESTIGATION ON)
THE MOTION OF THE COMMISSION INTO THE)
ADEQUACY OF BASIC TELECOMMUNICATIONS) PSC DOCKET NO. 08-194
SERVICES PROVIDED BY VERIZON DELAWARE)
LLC (OPENED AUGUST 19, 2008))

SETTLEMENT AGREEMENT

On this 29th day of October, 2009, Verizon Delaware LLC ("Verizon") or ("Company"), the Delaware Public Advocate ("Public Advocate"), and the Staff of the Delaware Public Service Commission ("Staff") (collectively, the "Settling Parties") hereby enter into this Settlement Agreement to resolve the issues raised in this proceeding.

I. INTRODUCTION

1. On August 19, 2008, the Commission, upon its own motion, entered Order No. 7433 to open this docket for the purpose of investigating the adequacy of basic telecommunications services provided by Verizon.

2. In Order No. 7433, the Commission observed that Staff conducts periodic reviews of the service quality performance of Verizon, especially regarding complaints of outages in areas served by older, copper telecommunications facilities.

3. On July 8, 2008, Staff presented to the Commission the results of its latest periodic review of Verizon's service quality, as reflected in Staff's July 8, 2008 memorandum to the Commission. The results indicated that while "service quality issues have improved on the whole, with few exceptions, since Staff and Verizon started [the review] process," the number of service complaints have trended upward since 2002 and, since 2006, Verizon has consistently failed to meet the Commission-established service objective for "out-of-service trouble reports cleared in 24 hours" and, at times, has missed the established objective for "repeated trouble reports."

4. As reflected in Order No. 7433, the Commission established this docket a) to conduct an investigation into the efficiency, sufficiency, and adequacy of basic services provided by Verizon over its copper facilities, and b) to investigate the extent to which Verizon Delaware LLC has met, and will in the future comply with, the objectives and reporting requirements set forth in the Commission's *Regulations Governing the Minimum Service Requirements for the Provision of Telephone Service for Public Use within the State of Delaware*, including (but not limited to) a review of customer service practices utilized by call center customer service representatives and, in particular, how Verizon "closes out" customer complaints.

5. During the course of this proceeding, the Settling Parties conducted substantial written discovery in the form of formal and informal data requests.

6. Senior Hearing Examiner Ruth Ann Price conducted the following public comment hearings: a) in Wilmington on March 9, 2009, b) in Dover on March 10, 2009, and in Georgetown on March 11, 2009.

7. The Settling Parties have conferred in an effort to resolve all issues raised in this proceeding. The Settling Parties acknowledge that they differ as to the proper resolution of many of the underlying issues in this proceeding. Notwithstanding these differences, the Settling Parties have agreed to enter into this Settlement Agreement on the terms and conditions contained herein, because they believe that this Settlement Agreement will serve the interests of a) the public, b) Verizon's customers, and c) Verizon. The Settling Parties agree that, subject to the approval of the Senior Hearing Examiner, the terms and conditions of this Settlement Agreement will be presented to the Commission for the Commission's approval forthwith.

II. SPECIFIC SETTLEMENT PROVISIONS

8. **Performance Improvement Plan.** Verizon-DE will work with Staff and the Public Advocate to develop a detailed performance improvement plan within 90 days of the Commission's approval of this Settlement Agreement. Specific areas to be addressed will include the following: a) Out-of-Service Trouble Clearing Time, b) percentage of Repeated Trouble Reports, and c) Business Office Answer Time.

The performance improvement plan will address employee training issues focusing on improving service to customers served by copper distribution facilities. Training emphasis will include techniques for ensuring weather-resistant copper cable enclosures.

9. **Monitoring.** Verizon will continue monitoring performance results in the same manner that it has during the Commission's investigation for the following five categories of service quality measurements: a) Primary Service Order Installations, b) Customer Trouble Reports, c) Out-of-Service Trouble Clearing Time, d) Repeated Trouble Reports, and e) Installation Commitments Met. Verizon will provide this information to Staff and the Public Advocate on a confidential basis upon request. Verizon will also work with Staff and the Public Advocate to develop a method for Verizon to address any service quality concerns identified by the performance results monitoring.

10. **Reports.** (a) Verizon will perform a review of, and provide Staff and the Public Advocate with a report describing, its processes and procedures used to track customer complaints and trouble reports. Such review is intended to provide assurance to the Commission that Verizon's procedures and systems properly handle trouble reports from the time a trouble report is received until it is closed out. The report will include a review of (i) the appointment, testing, and dispatch processes;

(ii) an examination of opportunities for enhancing the ability of Verizon's databases to share information; (iii) any prompting mechanisms for service technicians; and (iv) an evaluation of the vScrub process and the effectiveness of its automated line testing system. After the report is submitted to Staff and the Public Advocate, Verizon and its subject matter experts will meet with the Staff and the Public Advocate to address any questions resulting from the Report.

(b) Verizon will perform an analysis of the Company's business office answer time processes and performance reporting issues. The analysis will include all issues related to business office answer time performance including, if applicable, the timing delays caused by voice response menu systems that may impact waiting times and/or performance results.

11. **Quarterly Reporting and Review.** (a) Verizon will submit a quarterly report of "bypass" conditions. For purposes of this Settlement Agreement, "bypass" is defined as a temporary facility to bypass defective sections of cable.

(b) Verizon will provide the Staff and the Public Advocate with data quarterly showing its performance in Delaware for appointments met with respect to repair service.

(c) Verizon will meet with Staff and the Public Advocate on a quarterly basis to discuss its efforts regarding Verizon's infrastructure improvement projects.

12. **Duration.** The requirements in paragraphs 8 through 11 above will remain in effect, through December 31, 2011, and will be effective under normal operating conditions. Normal operating conditions means service conditions within Verizon's control. In the event service conditions arise that are not within Verizon's control, (a) the Commission may waive any requirements, or (b) Staff and the Public Advocate may, with the Commission's approval, stipulate to a suspension of any requirements. Conditions not within Verizon's control include, but are not limited to, emergency conditions such as extreme weather, acts of God, natural disasters, civil disturbances, acts of vandalism, and work stoppages.

III. ADDITIONAL PROVISIONS AND RESERVATIONS

13. The provisions of this Settlement Agreement are not severable.

14. This Settlement Agreement represents a compromise for the purposes of settlement and shall not be regarded as having any precedential effect in any future proceeding involving one or more of the Settling Parties, or any other person or regulated entity of any kind. However, consistent with and subject to the provisos expressly set forth below, this Settlement Agreement shall preclude any Settling Party from taking a contrary position with respect to issues specifically addressed and resolved herein in proceedings involving the review of this Settlement Agreement. Except as expressly set forth in this Agreement, none of the Settling Parties waives any rights it may have to take any

position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or previously taken.

15. In the event that this Settlement Agreement does not become final, each of the Settling Parties reserves its respective rights to submit testimony, file briefs, or otherwise take positions as it deems appropriate in its sole discretion to litigate the issues in this proceeding.

16. This Settlement Agreement shall become fully effective upon the Commission's issuance of a final order approving this Settlement Agreement and all the settlement terms and conditions without modification. After the issuance of such final order, the terms of this Settlement Agreement shall be enforceable.

17. This Settlement Agreement resolves all of the issues specifically addressed herein and/or raised in this proceeding. The Settling Parties hereby irrevocably waive any right to appeal any Commission order approving this Settlement Agreement without modification. However, this Settlement Agreement is made without admission against or prejudice to any factual or legal positions which any of the Settling Parties may assert (a) in the event that the Commission does not issue a final order approving this Settlement Agreement without modifications; or (b) in other proceedings before the Commission or other governmental body so long as such positions do not attempt to abrogate this Settlement Agreement. This Settlement Agreement is determinative and conclusive of the issues addressed herein and, upon approval by

the Commission, shall constitute a final adjudication as to the Settling Parties of all of the issues addressed herein.

18. This Settlement Agreement is expressly conditioned upon the Commission's approval of each of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Settlement Agreement will terminate and be of no force and effect. The Settling Parties agree that each term of this Settlement Agreement is an integral part of the whole. If this Settlement Agreement is not accepted in full by the Commission, each Settling Party reserves the right to oppose any aspect of this Settlement Agreement including those aspects which the Commission has accepted without modification.

19. It is expressly understood and agreed that this Settlement Agreement constitutes a negotiated resolution of the issues in this proceeding. The Settling Parties shall make their best efforts to support this Settlement Agreement and to secure its approval by the Commission.

20. Each of the Settling Parties has cooperated in the drafting and preparation of this Settlement Agreement. Consequently, the interpretation of this Settlement Agreement shall not be construed either "for" or "against" any Settling Party based upon the party's status as the drafter of any particular provision of this Settlement Agreement, or this Settlement Agreement as a whole.

21. This Settlement Agreement shall be governed by, construed, and interpreted in accordance with the substantive laws of the State of Delaware without giving effect to its conflict of laws principles.

22. This Settlement Agreement may be executed in counterparts, and each counterpart shall constitute part of the original Settlement Agreement.

23. Each signatory represents that he or she has the authority to bind the Settling Party for whom the signatory executes this Settlement Agreement.

Intending to legally bind themselves and their successors and assigns, the undersigned Settling Parties have caused this Settlement Agreement to be signed by their duly authorized representatives.

Verizon Delaware LLC

Dated: _____

By: _____

Title: _____

Delaware Public Service Commission

Staff

Dated: 10/29/09

By: Brene H. Bueat

Public Advocate

Dated: 11/8/09

By: 